

Regular Session, 2009

ACT No. 182

HOUSE BILL NO. 244

BY REPRESENTATIVE ROY

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

1 AN ACT

2 To amend and reenact R.S. 13:5304(B)(3)(f), R.S. 15:574.4.1(B) and Code of Criminal
3 Procedure Article 900(A)(6)(a) and (b) and to enact R.S. 15:574.4.1(A)(6) and (J)
4 and Code of Criminal Procedure Article 900(A)(6)(c), relative to the drug division
5 probation program; to authorize the court to order that a defendant who has been
6 placed on probation by the drug division probation program, and who has had his
7 probation revoked for a technical violation, be committed to the custody of the
8 Department of Public Safety and Corrections and be required to serve in the
9 intensive incarceration program; to provide for the period of time the defendant may
10 be sentenced to intensive incarceration; to provide that upon successful completion
11 of intensive incarceration the defendant shall return to active, supervised probation
12 with the drug division probation program; to provide for applicability; to provide for
13 resentencing when a defendant is denied entry into the intensive incarceration
14 program; and to provide for related matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. R.S. 13:5304(B)(3)(f) is hereby amended and reenacted to read as
17 follows:

18 §5304. The drug division probation program

19 * * *

20 B. Participation in probation programs shall be subject to the following
21 provisions:

22 * * *

1 (3) In offering a defendant the opportunity to request treatment, the court
2 shall advise the defendant of the following:

3 * * *

4 (f) If the defendant completes the drug division probation program, and
5 successfully completes all other requirements of his court-ordered probation, the
6 conviction may be set aside and the prosecution dismissed in accordance with the
7 provisions of Code of Criminal Procedure Articles 893 and 894. If the defendant
8 was sentenced at the time of the entry of the plea of guilty, the successful completion
9 of the drug division probation program and the other requirements of probation will
10 result in his discharge from supervision. If the defendant does not successfully
11 complete the drug division probation program, the judge may revoke the probation
12 and impose sentence, or the judge may revoke the probation and order the defendant
13 to serve the sentence previously imposed and suspended, or the judge may revoke
14 the probation and order the defendant to be committed to the custody of the
15 Department of Public Safety and Corrections and be required to serve a sentence of
16 not more than six months without diminution of sentence in the intensive
17 incarceration program pursuant to R.S. 15:574.4.1, or the court may impose any
18 sanction provided by Code of Criminal Procedure Article 900, and extend probation
19 and order that the defendant continue treatment for an additional period, or both.

20 * * *

21 Section 2. R.S. 15:574.4.1(B) is hereby amended and reenacted and R.S.
22 15:574.4.1(A)(6) and (J) are hereby enacted to read as follows:

23 §574.4.1. Parole; intensive parole supervision; eligibility

24 A.

25 * * *

26 (6) The court sentences an offender in the drug division probation program
27 pursuant to R.S. 13:5304.

28 B. Notwithstanding the provisions of R.S. 15:574.4(A)(1), an offender who
29 is otherwise eligible for intensive incarceration and intensive parole supervision, but
30 who has not been recommended for participation in the intensive incarceration and

intensive parole supervision program by the division of probation and parole ~~of the~~
~~office of adult services and~~ or the sentencing judge, as provided for in Paragraphs
(A)(2) and (3) of this Section, may additionally be placed in the intensive
incarceration and intensive parole supervision program if all of the following
conditions are met:

* * *

J. In cases in which the court sentences a defendant in the drug division
probation program for a technical violation of probation, the offender shall return to
active supervised probation with the drug division probation program for a period as
ordered by the court, subject to any additional conditions imposed by the court.

Section 3. Code of Criminal Procedure Article 900(A)(6)(a) and (b) are hereby
amended and reenacted and Code of Criminal Procedure Article 900(A)(6)(c) is hereby
enacted to read as follows:

Art. 900. Violation hearing; sanctions

A. After an arrest or service of a summons pursuant to Article 899, the court
shall cause the defendant to be brought before it within ten days for a hearing. The
hearing may be informal or summary. If the court decides that the defendant has
violated, or was about to violate, a condition of his probation it may:

* * *

(6)(a) Notwithstanding the provisions of Subparagraph (A)(5) of this Article,
any defendant who has been placed on probation by the drug division probation
program pursuant to R.S. 13:5304, and who has had his probation revoked under the
provisions of this Article for a technical violation of drug division probation as
determined by the court, may be ordered to be committed to the custody of the
Department of Public Safety and Corrections and be required to serve a sentence of
not more than six months without diminution of sentence in the intensive
incarceration program pursuant to the provisions of R.S. 15:574.4.1. Upon
successful completion of the program, the defendant shall return to active, supervised
probation with the drug division probation program for a period of time as ordered
by the court, subject to any additional conditions imposed by the court and under the

1 same provisions of law under which the defendant was originally sentenced. If an
2 offender is denied entry into the intensive incarceration program for physical or
3 mental health reasons or for failure to meet the department's suitability criteria, the
4 department shall notify the sentencing court for resentencing in accordance with the
5 provisions of the Code of Criminal Procedure Article 881.1.

6 ~~(a)~~ (b) Notwithstanding the provisions of Subparagraph (A)(5) of this
7 Article, any defendant who has been placed on probation by the court for the
8 conviction of an offense other than a crime of violence as defined in R.S. 14:2(B) or
9 of a sex offense as defined in R.S. 15:541(24), and who has had his probation
10 revoked under the provisions of this Article for his first technical violation of his
11 probation as determined by the court, shall be required to serve a sentence of not
12 more than ninety days without diminution of sentence or credit for time served prior
13 to the revocation for a technical violation. The term of the revocation for a technical
14 violation shall begin on the date the court orders the revocation. Upon completion
15 of the imposed sentence for the technical revocation, the defendant shall return to
16 active and supervised probation for a period equal to the remainder of the original
17 period of probation subject to any additional conditions imposed by the court. The
18 provisions of this Paragraph shall apply only to the defendant's first revocation for
19 a technical violation.

20 ~~(b)~~ (c) A "technical violation", as used in this Paragraph, means any
21 violation except it shall not include any of the following:

22 (i) Being arrested, charged, or convicted of any of the following:

23 (aa) A felony.

24 (bb) A violation of any provision of Title 40 of the Louisiana Revised
25 Statutes of 1950.

26 (cc) Any intentional misdemeanor directly affecting the person.

27 (dd) At the discretion of the court, any attempt to commit any intentional
28 misdemeanor directly affecting the person.

29 (ee) At the discretion of the court, any attempt to commit any other
30 misdemeanor.

- 1
- (ii) Being in possession of a firearm or other prohibited weapon.
- 2
- (iii) Failing to appear at any court hearing.
- 3
- (iv) Absconding from the jurisdiction of the court.
- 4
- (v) Failing to satisfactorily complete a drug court program if ordered to do
- 5
- so as a special condition of probation.
- 6
- * * *

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____